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FISCAL IMPACT REPORT

SPONSOR: Jennings DATE TYPED: 02/07/02 HB _____
 SHORT TITLE: Lower Pecos Basin Water Preservation District SB 393
 ANALYST: Chabot

APPROPRIATION

| Appropriation Contained | | Estimated Additional Impact | | Recurring or Non-Rec | Fund Affected |
|-------------------------|------|-----------------------------|------|----------------------|---------------|
| FY02 | FY03 | FY02 | FY03 | | |
| | | \$140.0 | | Recurring | TRD GRT Fund |

(Parenthesis () Indicate Expenditure Decreases)

REVENUE

| Estimated Revenue | | Subsequent Years Impact | Recurring or Non-Rec | Fund Affected |
|-------------------|-----------|----------------------------------|----------------------|--|
| FY02 | FY03 | | | |
| | \$5,400.0 | \$6,000.0 (plus economic growth) | Recurring | County Lower Pecos Basin Water Preservation Bonding Fund |
| | \$12.0) | \$12.0 | Recurring | Ad Valorem Tax |
| | (\$162.0) | (\$180.0) | Recurring | County Lower Pecos Basin Water Preservation Bonding Fund |

(Parenthesis () Indicate Revenue Decreases)

Relates to SB 267, SB 271, SB 341, SB 343, HB 225 and HB 274.

SOURCES OF INFORMATION

LFC Files
 Municipal League
 New Mexico Acequia Association (NMAA)
 New Mexico Environment Department
 New Mexico Finance Authority (NMFA)
 Office of the State Engineer (OSE)
 Secretary of State
 State Investment Council
 Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

Senate Bill 341 is to be known as the "Lower Pecos Basin Water Preservation District Act." The bill creates the Lower Pecos Basin Water Preservation District comprised of the area encompassing Eddy, Chaves, Lincoln and De Baca counties. The bill creates a governing board consisting of a representative of each county appointed by the respective county commission, one member appointed by the governing body of each irrigation district, conservancy district and artesian conservancy district wholly or partly within the Lower Pecos Basin Water Preservation District and the State Engineer or his representative. The board shall meet at the call of the chair but the initial meeting must be before September 1, 2002 and must meet at least once each fiscal year .

The bill levies an ad valorem assessment on all irrigated farmland in the district at the rate of not more than one dollar (\$1.00) per one thousand dollars (\$1,000) of the net taxable value. The bill also establishes a gross receipts tax of one-fourth of one percent for all businesses operating in the district. Exemptions from the gross receipts tax are provided for transportation services originating within the district to locations outside the district and for direct satellite broadcasting and items exempted by federal law. The tax shall terminate three months from the date that the Lower Pecos Basin Water Preservation District determines that the revenue is no longer required. TRD will collect and distribute the gross receipt tax and up to three percent may be used for administrative costs in collection of the revenue.

The Lower Pecos Basin Water Preservation Bonding Fund is created with revenue from appropriations, revenues from the property tax assessments and the gross receipts tax. The revenue in the fund is pledged for the payment of preservation revenue bonds issued by the Lower Pecos Basin Water Preservation District. Bonds issued do not create an obligation or indebtedness to the State. The State pledges that it will not use the revenue for any other purpose and the statute will not be amended or repealed or otherwise modified so as to impair payment of the bonds. The bill specifies how the bonds will issued, sold and refunded. The board has full authority for issuing the bonds and they will be tax exempt by the state or any of its political subdivisions. OSE will consult with the board and determine the need for projects to be funded from the bond revenue. TRD estimates that a revenue stream of \$5.4 million for debt service would be sufficient to generate about \$60 million in proceeds. These proceeds are appropriated to the state engineer for expenditure in 2003 for implementing the requirements of the act.

Significant Issues

The state is obligated to meet compact water delivery requirements to Texas and is under a United States Supreme Court decree since 1988 to do so. The state has been able to meet these requirements; however, it has been barely able to do. The River Master will issue an accounting by May 2002 for calendar year 2001. The state expects that they will meet the requirement but will have used all reserves in doing so. OSE states that water depletions in the Pecos river basin must be reduced or water flow increased in order to meet the compact requirements. If the state defaults in its compact delivery requirements, OSE will be obligated to manage the river through priority administration causing a major economic impact on southeastern New Mexico. A 1993 study estimated that impact to be approximately \$236 million. A more in-depth discussion of Pecos River Compact issues is found at attachment 3.

OSE states that this bill provides a comprehensive approach to bring the Pecos River into balance with both short-term and long-term solutions. ISC would work with the Carlsbad Irrigation District, Pecos Valley Artesian Conservancy District and the other conservancy districts and water users on the river to achieve compliance with New Mexico's obligations for water delivery to Texas. OSE states they will need at least one, temporary FTE to manage the complexity the water right purchases required by this bill.

The Municipal League states that Section 7-37-7 NMSA 1978 requires that any property tax imposed must be ratified by the voters and there is no provision in the bill for that elections. They also question whether the gross receipts tax can be designated for the special district created by the bill as this is reserved for the cities and counties.

TRD provides the current gross receipts tax by county:

1. Chaves
 - a. Dexter 6.3125%
 - b. Hagerman 6.5000%
 - c. Lake Arthur 5.8125%
 - d. Roswell 6.5000%
 - e. Remainder of County 5.9375%
2. De Baca
 - a. Fort Sumner 6.1875%
 - b. Remainder of County 5.6250%
3. Eddy
 - a. Artesia 6.3125%
 - b. Carlsbad 6.3125%
 - c. Hope 6.1250%
 - d. Loving 6.3125%
 - e. Remainder of County 5.7500%
4. Lincoln
 - a. Capitan 6.1875%
 - b. Carrizozo 6.2500%
 - c. Corona 6.0625%
 - d. Ruidoso 7.1875%
 - e. Ruidoso Downs 6.1875%
 - f. Remainder of County 5.3750%

TRD states that the exemptions to the gross receipts tax would "introduce significant complexity" into administration of the tax. New forms and data processing system designs would be required.

NMAA is concerned that the provision that allows the ISC to sell any "excess" water rights purchased makes the ISC a de facto water bank. They express that this should be accomplished to other legislation. In addition, they are opposed to the purchase of any acequia water rights on the Pecos in northern New Mexico without the participation of the acequia district boards.

FISCAL IMPLICATIONS

Taxes imposed by this bill will generate approximately \$5,400.0 in annual revenue which will generate a bonding capacity of approximately \$60 million. The taxes would need to remain in place until the bonds are retired.

TRD estimates that the ad valorem tax will earn about \$12.0 annually based upon estimates of the taxable value of irrigated land in the four counties being appropriately \$12.1 million. This was confirmed by information provided by the county assessors for the four counties (Attachment 1). In addition, TRD estimates that the gross receipts tax will generate \$5,400.0 in revenue. Using gross receipts for fiscal year 2000 and using TRD gross projections, the estimated revenue is \$6 million. (See Attachment 2) TRD is authorized to use up to three percent of the collected revenues for administrative expenses. This would range from \$162.0 to \$180.0.

ADMINISTRATIVE IMPLICATIONS

Implementation of this program will take a cooperative effort by OSE, ISC, the Lower Pecos Basin Water Preservation District, Pecos River conservancy and irrigation districts and other water users of the river basin.

TECHNICAL ISSUES

OSE regulates water uses in New Mexico and would be in possible conflict in purchasing water rights. The ISC has that authority and OSE recommends the following technical changes : page 5 lines 3 and 4, page 5 line 9, page 10 line 23, page 11 line 2, page 12 line 15 and page 18 line 14 replace 'state engineer' with 'interstate stream commission'.

POSSIBLE QUESTIONS

1. Has the ad hoc Pecos River Basin Committee identified potential water rights available for purchase ?
2. If water rights are not available for purchase, what other alternative exist for reducing water use from the river ?
3. The alternative to purchasing water rights would be for OSE to administer the river by priority, does OSE have a workable plan to do so ?
4. Does a cooperative spirit exist within all participants affected by the Lower Pecos Basin Water Preservation District Act ?
5. Does the Lower Pecos Basin Water Preservation District have the authority to impose an ad valorem and gross receipts tax without an election to approve the recommendation ?

Attachments

Proposed Ad Volarum Tax Revenues
Proposed New Gross Receipt Tax Revenues
Pecos Water Issues

GAC/njw